

# FISCAL NOTE

**Bill #:** HB0296

**Title:** Revise attorney fees for medical expenses in work comp cases

**Primary Sponsor:** Jent, L

**Status:** As Introduced

|                   |      |                                 |      |
|-------------------|------|---------------------------------|------|
| Sponsor signature | Date | Chuck Swysgood, Budget Director | Date |
|-------------------|------|---------------------------------|------|

## Fiscal Summary

|  | <b><u>FY 2004<br/>Difference</u></b> | <b><u>FY 2005<br/>Difference</u></b> |
|--|--------------------------------------|--------------------------------------|
| <b>Expenditures:</b>                       |                                      |                                      |
| Proprietary                                | Unable to determine                  | Unable to determine                  |
| <b>Revenue:</b>                            |                                      |                                      |
| Proprietary                                | Unable to determine                  | Unable to determine                  |
| <b>Net Impact on General Fund Balance:</b> | \$0                                  | \$0                                  |

- |   |  |
|---|--|
| <input type="checkbox"/> Significant Local Gov. Impact    | <input type="checkbox"/> Technical Concerns            |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached  | <input type="checkbox"/> Needs to be included in HB 2  |

## Fiscal Analysis

### ASSUMPTIONS:

1. The National Council on Compensation Insurance, Inc. (NCCI) was requested by the State Fund to complete an analysis of the cost of this legislation on Montana's workers' compensation and occupational disease system.
2. HB 296 would make the insurer/employer liable for attorney fees, as ordered by the workers' compensation court, on medical benefits even if the insurer's action in denying benefits were deemed reasonable.
3. Costs to the insurer through payment of attorney fees would increase expenditures, although the fiscal impact is difficult to determine at this time.
4. State Fund may not seek reimbursement or contribution from a health care provider for any costs or fees awarded pursuant to this bill.
5. The State Fund is funded through premiums charged to policyholders and investment income.
6. The State Fund is required in law to charge premiums for the classifications so that the State Fund will be neither more nor less than self-supporting. (39-71-2316 (5), MCA)
7. All New Fund losses from accident year 1998 and forward total \$297,997,246 and are derived from 10,311 claims.
8. Over this five and a half year period, attorneys have been involved on 1,604 or 15.6 percent of these claims representing \$102,174,504 or 34.3 percent of total losses.
9. It is assumed that 55 percent of all New Fund losses are medical losses. This equates to \$56,195,977 for the

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(continued)

period measured.

10. For the past five and a half years, an average of \$10,217,450 per year in medical benefits has been paid on claims where attorneys represent injured employees.
11. This bill could potentially add 25 percent to the medical expenses paid annually on claims with attorney involvement.
12. Based on the above assumptions the maximum fiscal impact of this legislation would be estimated to be \$2,554,363 in each year of the biennium. However, many claims do not proceed to litigation before the workers' compensation court and as such the actual amount would be much less.
13. An insurer does not have to be found unreasonable in the award of attorney fees by the workers compensation court.

**TECHNICAL NOTES:**

1. A reasonable estimate of the cost of this legislation is difficult to determine, as these fees are not currently awarded and actual utilization of the award of fees is difficult to anticipate.
2. An increase in expenditures will be factored into the ratemaking process and the State Fund is likely to need to collect additional premium from policyholders to offset increased expenditures due to this legislation.